IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10109 OF 2004

Shri Bhagyashree Cooperative
Housing Society Ltd. ..Petitioner
Vs.
Shri Ajit Madhavrao Ravetkar ..Respondent

Mr. P.S. Dani for petitioner.
Mr. Anil Subramaniam for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2006.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner.

2. Rule. Respondent waives service.

3. Petition is taken up for final hearing forthwith.

4. The present respondent had approached the Co-operative Court in Dispute No.168 of 1994 and the same came to be finally decided by the learned Judge of the IInd Co-operative Court at Pune by his award dated 31/7/1996. The said award was sought to be challenged by filing an appeal before the Appellate Court but belatedly and, therefore, Misc. Application

No.20 of 1997 was filed for delay condonation. The said application has been rejected by the learned Member of the Maharashtra State Co-operative Appellate Court, Bench at Pune on 14/9/2004 and hence this petition.

5. The petitioner-society has claimed that though the award was passed by the Co-operative Court on 31/7/1996 in Dispute No.168 of 1994, the society was ignorant of the same and it learnt about the same award sometime in the month of January, 1997 and thereafter immediately it applied for a certified copy of the award. The certified true copy was made available on 31/1/1997 and of the award on 10/3/97. The appeal was filed on 5/4/1997 and thus there was a delay of 172 days. The learned Judge of the Lower Appellate Court held that the society failed to explain satisfactorily the delay caused. He noted that the applicant had obtained copy of the judgment and order on 31/1/1997 and obviously there was a delay of more than two months in filing the appeal. The applicant had also remained absent before the Co-operative Court after filing the Written Statement but it explained that the said absence was on account

of the alleged negotiations for settlement. Even if it is assumed that the award was passed on 31/7/1996 and the limitation period started running 60 days after this date, the petitioner was late by about 6 to 7 months in approaching the Lower Appellate Court at the most and the remedy of appeal which is a statutory remedy cannot be defeated only on the ground of delay of two months. The approach of the Lower Appellate Court appears to be hyper-technical. This is a fit case where the delay is required to be condoned and more so when the society represents the collective body of members and it is not a case of an individual litigant.

6. Hence, the petition is allowed and the impugned order dated 14/9/2004 is hereby quashed and set aside. Misc. Application No.20 of 1997 stands allowed on payment of costs of Rs.500/- and it is ordered that the appeal filed by the petitioner-society before the Lower Appellate Court be registered and decided on its own merits.

7. Rule made absolute accordingly.

(B.H. Marlapalle,J.)